

### **III. REMARKS**

A third non-final Office Action was issued in this application on October 5, 2011 (hereinafter “Third Non-final Action”); this submission is believed to be fully responsive to the Third Non-final Action. Claims 1, 2, 4-7, 9, 10 and 12-25 are pending in this application; all pending claims currently stand rejected. The specification is also objected to by the Examiner. Claims 9, 15, 18-20 and 22 are amended herein. In addition, Applicants have amended the title of the invention. After entering this response, claims 1, 2, 4-7, 9, 10 and 12-25 remain pending. Reconsideration and allowance of this application in view of the above amendments and the following remarks is earnestly solicited.

#### **A. SUBSTANCE OF EXAMINER INTERVIEW**

On Monday, November 14, 2011, Applicants’ representatives, Michael J. Blankstein (Reg. No. 37,097) and Mark J. Levine (Reg. No. 60,300), conducted a telephonic interview of Examiner Andrew Kim, which was supervised by Examiner Dmitry Suhol. There were no other participants present during the interview. In addition, there were no exhibits shown and no demonstrations were conducted during the telephonic interview. The parties discussed the 35 U.S.C. § 103(a) rejections of claims 1, 2, 4-7, 9, 10 and 12-25 as being obvious over U.S. Patent Appl. Publ. No. 2001/0031658 A1, to Ozaki et al., in view of Japanese Patent Publ. No. 11-155998 A, to Fujii, and U.S. Patent No. 5,580,055, to Hagiwara. No agreement was reached as to the allowability of the pending claims. This summary is intended solely to make the substance of the interview part of the record in compliance with 37 C.F.R. §§ 1.2 and 1.133(b). *See* MPEP 713.01, 713.04. Applicants and Applicants’ representatives sincerely thank both Examiner Kim and Examiner Suhol for the courtesy of the interview.

#### **B. CLAIM AMENDMENTS**

Applicants have amended claims 9, 15, 18-20 and 22, as presented in the Listing of the Claims section, *supra* § II, at 5-7. These claim amendments are not being made to distinguish the claims over the prior art of record, which will become readily apparent from the following discussion of the pending claim rejections. As such, were an action subsequent hereto to present a new ground of rejection, such new ground of rejection could not properly be asserted to be

necessitated by Applicants' amendments of the claims, as the claims were not substantively amended to overcome the cited references and, moreover, do not include all of the claims. *Accord* MPEP 706.07(a). Accordingly, it would be improper and contrary to federal regulations and MPEP directives for such action to be made final.

### **C. OBJECTION TO THE SPECIFICATION**

The specification is objected to because the title of the invention is allegedly not descriptive. *See* Third Non-final Action, Item No. 1, at 2. The Examiner is therefore requiring a new title that is more indicative of the invention to which the claims are directed. *See id.* In an attempt to help expedite prosecution of the captioned application, Applicants have amended the title to recite "Gaming Machine with Image Display Assistance Feature". *See, supra*, § I, at 2. This amendment is not intended to be limiting, but rather to improve the informative value of the title in indexing, classifying, searching, etc. *See* MPEP 606.01. Applicants therefore respectfully request reconsideration and withdrawal of the objection to the specification.

### **D. CLAIM REJECTIONS – 35 U.S.C. 103**

Claims 1, 2, 4-7, 9, 10 and 12-25 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Appl. Publ. No. 2001/0031658 A1, to Ozaki et al. (hereinafter "Ozaki"), in view of Japanese Patent Publ. No. 11-155998 A, to Fujii (hereinafter "Fujii"), and U.S. Patent No. 5,580,055, to Hagiwara (hereinafter "Hagiwara"). Please note, Item No. 5 of the Third Non-final Action erroneously enumerates claims 1, 2, 4, 5, 7 and 9-25 as being rejected under § 103(a); however, claim 6 should have been included, *see, id.*, at 7, and claim 11, which was previously cancelled from further consideration, should not have been included. Nevertheless, Applicants respectfully traverse the pending § 103(a) rejections as factually erroneous and legally improper.

A proper rejection under Section 103(a) requires the examiner establish *prima facie* obviousness. The legal concept of *prima facie* obviousness allocates who has the burden of going forward with a requisite production of evidence in each step of the examination process. *See* MPEP 2142; *In re Spada*, 911 F.2d 705, 707 n. 3 (Fed.Cir.1990). In this vein, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of

obviousness.” MPEP § 2142. *See, also*, MPEP 2106 (The burden is on the USPTO to set forth a *prima facie* case of unpatentability.). Consequently, “[i]f the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” MPEP § 2142. *See, also*, *In re Grabiak*, 769 F.2d 729, 733 (Fed.Cir.1985).

To properly substantiate a *prima facie* case of obviousness requires the examiner show that the applied references teach, suggest, or otherwise disclose every element and limitation of the rejected claims. *See, e.g.*, *In re Kotzab*, 217 F.3d 1365, 1369-71 (Fed. Cir. 2000). Indeed, as the Board of Patent Appeal and Interferences recently confirmed, the failure of an asserted combination to teach or suggest each and every limitation of a claim is fatal to an obviousness rejection under § 103(a). *Ex parte Wada and Murphy*, Appeal No. 2007-3733, Slip Op. at 7 (BPAI 2008), citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003). Similar to the Board’s decision in *Ex parte Wehling*, “[a] dispositive issue in this case is whether the Examiner has explicitly articulated a *prima facie* case of obviousness which addresses all of the limitations of the claimed invention.” Appeal No. 2009-8111, Slip Op. at 6 (BPAI 2010). The examiner may not opportunely disregard any of the characterizing claim limitations; rather, “[every] word[] in a claim must be considered in judging the patentability of a claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). *See, also*, *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Applicants respectfully submit that a *prima facie* case of obviousness has not been properly presented against any of the pending claims.

Independent claim 1, for example, is directed to a gaming machine that includes, *inter alia*, a variable display device configured to variably display a plurality of symbol rows, and an image display device in front of and opposed to the variable display device. The image display device includes a liquid crystal display configured to display video images associated with a game, and a light guide plate located behind the liquid crystal display and in front of the variable display device. The light guide plate has at least one opening through which the symbols on the variable display device are displayed. The gaming machine of claim 1 also includes an image display assistance device positioned lateral to the area between the variable display device and the image display device. A rear illumination lamp is configured to illuminate the symbols from behind the symbols and to provide backlighting to the liquid crystal display in the region within the opening of the light guide plate. The image display assistance device reflects light emitted from the rear illumination lamp to assist in providing backlighting to the liquid crystal display in

the region within the opening(s) of the light guide plate. Similar (albeit not identical) limitations can be found in independent claims 2, 9 and 10.

In rejecting independent claim 1, the Third Non-final Action opines that Ozaki discloses, *inter alia*, an image display device in front of and opposed to a variable display device. *See, id.*, Item No. 5, at 3. The image display device is said to include “a liquid crystal display for displaying the video images (paragraph [0138]),” as well as “a light guide plate located behind the liquid crystal display and in front of the variable display device (paragraphs [0137, 0139]).” *Id.* Ozaki’s so called light guide plate includes “at least one opening through which the symbols on the variable display device are displayed, the light guide plate providing backlighting to the liquid crystal display in regions outside of the opening (paragraphs [0045, 0137, 0139]).” *Id.* The Third Non-final Action thereafter acknowledges, however, that Ozaki fails to disclose: (1) “illumination behind the symbols”; and (2) “an image display assistance device being provided lateral to an area between the variable display device and the image display device to cover an area sandwiched between the symbol placement face and the symbol transmission face, and configured to assist image display of the image display device and reflects light emitted from the rear illumination lamp.” *Id.*, at 4.

In regard to the second previously enumerated limitation, the Examiner turns to Fujii, which allegedly discloses “many reflectors including the lateral area between the symbol placement face and the symbol transmission face to provide the symbol variable display better visibility of the symbols (fig. 4, items 25, 26 and 27, paragraph(s) [0009, 0024]-[0028]).” *Id.*, at 5. Based on the foregoing observations and interpretations, the Examiner concludes that “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ozaki with [Fujii’s] reflectors to provide better visibility of the symbols.” *Id.* Applicants respectfully submit that the Examiner’s interpretation of Ozaki and Fujii is factually erroneous, rendering all of the pending claim rejections likewise erroneous and, thus, legally improper.

The Ozaki reference does not teach all of the elements and limitations for which it is cited. Independent claim 1, for example, recites a display device with a liquid crystal display for displaying video images, and “a light guide plate located behind the liquid crystal display and in front of the variable display device”. The claimed light guide plate has “at least one opening through which the symbols on the variable display device are displayed, the light guide plate

providing backlighting to the liquid crystal display in regions outside of the opening.” Similar (albeit not identical) limitations can be found in independent claims 2, 9 and 10. Without pointing to any particular structure in any of the cited references, the Third Non-final Action suggests that a light guide plate is disclosed in paragraphs [0137]-[0139] of Ozaki. *See, id.*, at 4. No such disclosure is provided in these sections, or any other section of Ozaki. In fact, Applicants’ review of Ozaki has failed to reveal a single mention of “a light guide,” “a light guide plate,” “an optical wave guide,” or any similar structure.

Ostensibly, the Examiner appears to suggest that the semi-transparent reflective plate 25 shown in reference FIG. 28, and discussed in paragraphs [0138] and [0139] of Ozaki, is commensurate with the Applicants’ claimed “light guide plate.” Ozaki’s reflective plate 25 is not “a light guide plate,” as would be readily understood by a person of ordinary skill in the art. In general, a light guide, which is a type of optical waveguide, is a physical structure, usually made of glass or plastic, that guides electromagnetic waves in the optical spectrum by successive internal reflections. *E.g.*, Encyclopedia Britannica Online, “light guide” (2009), available at [www.i.eb.com](http://www.i.eb.com); “Sunlight in a tube,” World Science (2005); Ken Yeang, “Light Pipes: An Innovative Design Device for Bringing Natural Daylight and Illumination into Buildings with Deep Floor Plan,” Nomination for the Far East Economic Review Asian Innovation Awards (2003); U.S. Pat. Nos. 4,904,037, 5,519,803, 6,535,680. A typical light guide includes a dielectric waveguide structure in which a dielectric material with high permittivity, and thus high index of refraction, is surrounded by a material with lower permittivity. *See Wikipedia Free Online Encyclopedia*, “optical waveguide” (2009), available at [www.Wikipedia.com](http://www.Wikipedia.com). The waveguide structure guides optical waves by total internal reflection. The most commonly recognized optical waveguide is optical fiber.

At no point is Ozaki’s reflective plate 25 depicted or described as a light guide or similar structure. Contrastingly, the reflective plate 25 is described as a semi-transparent reflective structure that reflects light generated by a front light source 26, and transmits therethrough light generated by a back light source 9. At no point, however, does Ozaki teach or suggest that the reflective plate 25 is structurally configured like an optical waveguide. Moreover, a reflective plate would not be considered “a light guide plate” by a person of ordinary skill in the art. For this reason alone, the pending § 103(a) rejections are erroneous and improper.

Like Ozaki, Fujii also fails to teach the elements and limitations for which it is cited in the Office Action. For instance, independent claim 1 recites “a rear illumination lamp configured to illuminate the symbols from behind the symbols,” and an image display assistance device that “reflects light emitted from the rear illumination lamp to assist in providing backlighting to the liquid crystal display”. Analogous (although not identical) limitations can be found in independent claims 2, 9 and 10. Without identifying any particular structure in any of the cited references, the Third Non-final Action elusively suggests that “Fujii discloses many reflectors including the lateral area between the symbol placement face and the symbol transmission face to provide the symbol variable display better visibility of the symbols (fig. 4, items 25, 26 and 27, paragraph(s) [0009, 0024]-[0028]).” *Id.*, at 5. Recognizably, Fujii does disclose many reflectors - e.g., a pair of front light reflectors 25, a pair of intermediate light reflectors 26, and a pair of side light reflectors 27. None of Fujii’s reflectors, however, is depicted or described as being configured to reflect light emitted from a rear illumination lamp configured to illuminate the symbols from behind the symbols. Tellingly, Fujii does not teach or suggest a backlighting the reels or backlight assemblies for backlighting the reels. As such, Fujii cannot teach Applicants’ claimed image display assistance device that reflects light emitted by a rear illumination lamp that “illuminate[s] the symbols from behind the symbols”. For this reason alone, or in conjunction with any of the other reasons set forth herein, the pending § 103(a) rejections are believed to be erroneous and improper.

For at least the foregoing reasons, Applicants request reconsideration and withdrawal of all pending § 103(a) claim rejections.

There are numerous dependent claims that are independently distinguishable over the applied references. In a few non-specific examples, claims 6, 13, 15-18, 20-22 and 25 are patentably distinguishable over Ozaki, Fujii and Hagiwara irrespective of the patentability of the independent claims from which they respectively depend. Applicants respectfully request specific attention to the patentability of each of these claims.

For example, on page 7 of the Third Non-final Action, the Examiner acknowledges that “Ozaki in view of Fujii and Hagiwara … fails to explicitly teach that the image display assistance device comprises a white plate.” Nevertheless, claims 6, 16, 19 and 25 are alleged to be obvious because “one of ordinary skill in the art at the time of the invention would have

known that surfaces lighter in color reflect light better than surfaces darker in color.” *Id.* Even if Applicants were to submit that the foregoing allegation is true, for arguments sake, that still doesn’t address whether the inventions of claims 6, 16, 19 and 25, taken as a whole, would have been obvious in light of the prior art. Heretofore, there is no evidence on the record to show a gaming machine with the claimed white plate characterized in the manner set forth in Applicants’ claims. Thus, claims 6, 16, 19 and 25 are believed to be independently patentably distinguishable.

Similarly, with respect to claims 13 and 21, the Third Non-final Action suggests that reference FIG. 4 (items 24, 25, 26 and 27), and paragraphs [0024]-[0028] of Fujii disclose the claimed light reflector comprising a planar plate. This is contrary to what is shown in Fujii. In particular, none of the light reflector 24, 25, 26, 27 are depicted or described as planar plates. Thus, claims 13 and 21 are also believed to be independently patentably distinguishable.

### III. CONCLUSION

This submission is believed to be fully responsive to the Office Action of October 5, 2011. The amendments and remarks in support of the rejected claims are believed to place this application in condition for allowance, which action is herein respectfully requested. If the Examiner believes that a personal conference with Applicants' attorney will help expedite prosecution of the captioned application, the Examiner is reverently invited to contact the undersigned at his soonest convenience.

\* \* \* \* \*

All fees associated with this filing, if any, are believed to have been paid contemporaneously herewith. However, should any additional fees be deemed necessary (except for payment of the issue fee) or credits due, the Commissioner is hereby authorized to deduct the fees from or credit the overpayments to Nixon Peabody, LLP, Deposit Account No. 50-4181, Order No. 247079/000770USPT.

Respectfully submitted,

Dated: November 14, 2011

By: Mark J. LEVINE, Reg. No. 60,300/  
Mark J. Levine  
Registration No. 60,300  
NIXON PEABODY LLP  
300 South Riverside Plaza  
16<sup>th</sup> Floor  
Chicago, Illinois 60606  
T: (312) 425-3900  
F: (312) 425-3909  
mlevine@nixonpeabody.com